

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>DANIEL BRYAN KELLY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 2:05-cv-1150-T</b>
	)	
<b>RICKY OWENS, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANT COOSA COUNTY COMMISSION'S SUPPLEMENT TO ITS MOTION TO  
DISMISS THE PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW Defendant Coosa County Commission and supplements its Motion to Dismiss to include as additional supports the arguments and law cited by Defendant Dr. Weaver in his Motion for Summary Judgment and supporting briefs. In support thereof, Defendant states as follows:

1. The Plaintiff's Amended Complaint contains four federal claims against Coosa County for which the employment status of Dr. Weaver is relevant:

- a. deliberate indifference to a serious medical need by failing to provide medical care;
- b. deliberate indifference to a serious medical need by delaying medical treatment;
- c. failure to train jail staff to provide medication; and
- d. failure to train jail staff to recognize serious medical conditions.

2. The Plaintiff alleges three state law claims against the Coosa County Commission for which the employment status of Dr. Weaver is relevant:

- a. negligent hiring of Dr. Weaver;
- b. negligent retention of Dr. Weaver; and

c. a vicarious liability medical malpractice claim.

3. In addition to the arguments and law cited by the Coosa County Commission in its briefs supporting its Motion to Dismiss the Plaintiff's Amended Complaint, the Commission also adopts and incorporates the arguments and law cited by Dr. Weaver in his Motion for Summary Judgment and its supporting briefs. (Docs. 57, 58, 64.) As set forth in Dr. Weaver's pleadings, the Department of Health and Human Services deeming decision is binding on all parties and the Court in this litigation. Dr. Weaver was not, as a matter of law, an employee of the Coosa County Commission and could not have been the final policymaker for Coosa County as he was a Public Health Service Physician. Accordingly, the above-referenced claims against Coosa County should be dismissed as a matter of law.

WHEREFORE, PREMISES CONSIDERED, Defendant Coosa County Commission moves this Court to allow the Coosa County Commission to supplement its pleadings supporting its Motion to Dismiss the Plaintiff's Amended Complaint by allowing it to adopt and incorporate Dr. Weaver's Motion for Summary Judgment and supporting pleadings.

Respectfully submitted this 21st day of August, 2006.

**s/Gary L. Willford, Jr.**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 21st day of August, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Richard J. Stockham, III, Kristi Allen Dowdy, and Stephen Michael Doyle.**

**s/Gary L. Willford, Jr.**  
OF COUNSEL